

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALPHA CAPITAL ANSTALT,

Plaintiff,

-against-

09 Civ. 0670 (LAK)

ADVANCED CELL TECHNOLOGY, INC.,

Defendant.
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TEMPORARY RESTRAINING ORDER

LEWIS A. KAPLAN, *District Judge*.

Plaintiff brings this action to obtain, in substance, specific performance of an agreement that requires the defendant, at plaintiff's option, to convert certain debentures into common stock. At the argument of plaintiff's motion for a preliminary injunction, the defendant substantially conceded the breach of the agreement. In view of the paucity of current information concerning the defendant's financial condition and capital structure, which is attributable to the defendant's failure to file current reports with the Securities and Exchange Commission and its deficient response to the motion, as well as the apparent thinness of the market for defendant's securities, the Court has scheduled a hearing for February 9, 2009 at 11:30 a.m. in order to obtain evidence concerning, among other things, the question of the likelihood of irreparable injury in the absence of a preliminary injunction.

In the meantime, it appears that defendant may well issue of additional shares of common stock, thereby prejudicing the Court's ability to grant appropriate relief and causing irreparable injury to the plaintiff given the apparent inability of the defendant, which as of March 31, 2008, reported a negative net worth in excess of \$28 million, to respond to any damage award. Accordingly,

Defendant be and it hereby is enjoined and restrained from issuing or obligating itself to issue any shares of common stock pending the hearing and determination of plaintiff's motion for a preliminary injunction.

SO ORDERED.

Dated: February 6, 2009
Issued at: 11:35a.m.



Lewis A. Kaplan
United States District Judge

